

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

KEVIN B. DEAN,

Debtor

Chapter 11

Case No. 20-20427

KEVIN B. DEAN,

Plaintiff

v.

Adv. Proc. No. 21-2002

EMILE CLAVET,

Defendant

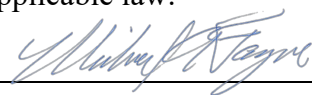
**ORDER ESTABLISHING SCHEDULE WITH RESPECT TO SUMMARY JUDGMENT**

The Court intends to consider, on its own initiative, issuing summary judgment in the Defendant's favor under 11 U.S.C. § 523(a)(2), (4), and/or (6). *See* Fed. R. Civ. P. 56(f)(3); *see also* Fed. R. Bankr. P. 7056. The material facts that do not appear to be in genuine dispute are (i) the facts alleged in the Plaintiff's complaint and (ii) the existence and terms of the judgment issued by the Maine Superior Court on January 8, 2020 in an action involving the Plaintiff and the Defendant and the memorandum of decision affirming that judgment issued by the Maine Supreme Judicial Court on October 13, 2020 (copies of which are attached to the proof of claim filed by the Defendant in the Plaintiff's chapter 11 case). Because that state court judgment was issued after trial, the parties have already had an opportunity to engage in discovery with respect to any facts germane to the nature of the debt (which is now undisputed by the Plaintiff). *See Rendondo Const. Corp. v. Izquierdo*, 746 F.3d 21, 29 (1st Cir. 2014) (providing that a trial court "may order summary judgment on its own initiative only when discovery is sufficiently

advanced that the parties have enjoyed a reasonable opportunity to glean the material facts”). Here, where a determination is likely to hinge solely on the preclusive effect of the state court judgment and the application of the Bankruptcy Code and binding caselaw interpreting the Bankruptcy Code, no additional discovery is warranted. *See Sanchez v. Triple-S Mgmt., Corp.*, 492 F.3d 1, 7 (1st Cir. 2007) (noting instance in which summary judgment was properly entered sua sponte “before *any* discovery had taken place, where the decision was based on legal conclusions independent of any potentially available evidence”).

The Plaintiff may submit a brief of no more than fourteen pages opposing summary judgment on or before February 26, 2021. Although it is difficult to conceive of additional facts that would be material to the dischargeability of the Plaintiff’s debt to the Defendant, the Plaintiff may also submit a concise statement of additional material facts, if any, each supported by a record citation as required by D. Me. Civ. R. 56(f), on or before February 26, 2021. *See Izquierdo*, 746 F.3d at 29 (explaining that “the court may enter summary judgment sua sponte only if it first gives the targeted party appropriate notice and a chance to present its evidence on the essential elements of the claim”). The Defendant may submit a brief of no more than fourteen pages in support of summary judgment and a reply statement of material facts limited to any additional facts submitted by the Plaintiff (which shall conform to the requirements of D. Me. Civ. R. 56(d)) with such filings due on or before March 12, 2021. Thereafter, the Court will either schedule oral argument (if the Court determines that such argument would aid the deliberative process) or take the matter under advisement and enter a summary judgment if warranted based on the undisputed material facts and the applicable law.

Dated: January 29, 2021

  
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Michael A. Fagone  
United States Bankruptcy Judge  
District of Maine